

Exhibit G

UNITED STATES DISTRICT COURT FOR THE
EASTER DISTRICT OF MICHIGAN

GARY BOIKE,

Plaintiff,

vs.

Civil Action No.:
2:17-cv-10109

AKAL SECURITY, INC.,

Defendant.

VIDEO DEPOSITION OF
HAVIVA GOLDHAGEN, M.D.

February 5, 2018

10 a.m.

3344 Peachtree Road, NE

Atlanta, GA

Diondre' Thomas, RPR, CCR-B-2433

1 A. Sounds good.

2 Q. All right. Dr. Goldhagen, are you a medical
3 doctor by training?

4 A. Yes.

5 Q. What is your medical education briefly?

6 A. Medical school.

7 Q. Where did you go to medical school and when?

8 A little bit more full than that, please.

9 A. Okay. University of Toronto for two years
10 between 1974 and '76, transferred to the University
11 of Calgary; Alberta, Canada from '76 to '78.
12 Graduated medical school in 1978. I did a year of
13 rotating internship in Toronto '78 to '79. Went into
14 practice from 1980 through about 1992 and took a
15 brief hiatus for about four years. Went back to do a
16 residency program in occupational medicine at Emory
17 University in Atlanta, graduated from that in 1998,
18 and then proceeded to work with Federal Occupational
19 Health from 1998 until I retired at the end of 2016.

20 Q. Thank you, doctor. You mentioned Federal
21 Occupational Health. What is Federal Occupational
22 Health?

23 A. Federal Occupational Health is a federal
24 agency tasked with providing health services to
25 federal employees.

1 Q. And to federal agencies?

2 A. And to federal agencies.

3 Q. And what did you do in connection with
4 working for or at the behest of Federal Occupational
5 Health?

6 A. I provided medical qualification
7 determinations for both applicants and employees from
8 federal agencies, as well as for the Marshals Service
9 and the CSOs in the Marshals Service.

10 Q. You mentioned CSOs, what does CSO stand for?

11 A. Court security officer.

12 Q. Did you consider yourself --

13 MS. SWEARENGEN: Kurt.

14 MR. PETERSON: Yes.

15 MS. SWEARENGEN: I'm having a little bit of
16 a hard time hearing Dr. Goldhagen.

17 MR. PETERSON: Let me move the speak around
18 a little bit to see if that helps any. Maybe
19 not. Doctor, if you could just speak up just a
20 little louder for Kate, and I will try to do the
21 same.

22 Kate, we will try to raise our voices a
23 little bit, make it easier for you. Let us know
24 if it doesn't work.

25 MS. SWEARENGEN: Okay.

1 BY MR. PETERSON:

2 Q. Doctor, do you consider yourself to be a
3 medical review officer in connection with Federal
4 Occupational Health?

5 A. Yes.

6 Q. That's just a term I've heard before,
7 medical review officer and I didn't know if that's
8 what you considered yourself to be doing or a title
9 that's applicable in connection with your work with
10 Federal Occupational Health?

11 A. We normally refer to ourselves as reviewing
12 medical officer rather than to medical review
13 officers in order to distinguish from medical review
14 officers, MROs, that basically look at drug screens
15 so -- because we did more than that we called
16 ourselves reviewing medical officers, but basically
17 either one is fine.

18 Q. Generally speaking, what did you do as a
19 reviewing medical officer?

20 A. These employees or applicants had their
21 actual medical exams performed close to where they
22 lived. So anywhere across the country. In order to
23 make the actual qualification as consistent as
24 possible across an agency it was felt to be important
25 that one person or multiple people reviewed the

1 actual exams. So all of the exams from the federal
2 agencies came through to our Atlanta office, as one
3 of the offices, but through let's say the Atlanta
4 office. And we would review the medical history,
5 physical findings, the lab work, any additional tests
6 like electrocardiogram or pulmonary functioning tests
7 that were done. And then we would make a
8 determination as to whether the individual was
9 medically qualified and/or if any additional
10 information was requested -- was needed in order to
11 make a medical determination prior to the actual
12 decision.

13 Q. Thank you. Let me ask a couple of follow-up
14 questions. So ultimately was the end objective of
15 what you were doing is to make a recommendation as to
16 whether an applicant or the incumbent whose ever exam
17 you were reviewing, exam and related results, your
18 ultimate objective was to determine whether in your
19 opinion that person was recommended to be medically
20 qualified to serve or recommended not to be medically
21 qualified to serve?

22 A. That's correct.

23 Q. You mentioned that the Atlanta office -- did
24 you do you're work as a reviewing medical officer out
25 of Atlanta?

1 A. Yes.

2 Q. In determining ultimately whether in your
3 opinion someone was medically qualified to serve, I
4 think you mentioned you did review a host of medical
5 condition and criteria as to the applicant or
6 incumbent?

7 A. Yes.

8 Q. Was one of the criteria that you considered
9 in evaluating whether someone was medically qualified
10 to serve for at least a court security officer
11 working in conjunction with the United States
12 Marshals service was one of the criteria you examined
13 the color vision or color vision deficiency of that
14 person?

15 A. Yes.

16 Q. Was color vision deficiency considered only
17 in connection with court security officers working in
18 connection with the United States Marshals service or
19 were there other agencies where color vision was
20 considered as well?

21 A. There were other agencies where color vision
22 was a requirement for the job.

23 Q. You mentioned requirement was the ability to
24 distinguish basic colors a requirement to be
25 medically qualified to serve as a court security

1 officer working in conjunction with the United States
2 Marshals service?

3 A. Yes.

4 Q. Do you know who set that determination or
5 made that determination?

6 A. Dr. Miller set that determination when he
7 performed a job task analysis for the U.S. Marshals
8 service specific for the court security officer
9 position back in -- I believe he began the study in
10 1999 completed it in 2000.

11 Q. Can you tell us a little bit more about
12 Dr. Miller and the job function analysis you
13 referenced. Can you walk us through what you
14 understood occurred in that job functional analysis
15 by Dr. Miller?

16 A. Dr. Miller was tasked with performing an
17 assessment of the job requirements for court security
18 officers for the purpose of determining what the
19 medical standard should be for a court security
20 officer. In performing that analysis he traveled to
21 I believe five sites across the country performing
22 focus groups, interviews and ride alongs, actually
23 seeing what job functions were being performed. And
24 following that he made a determination as to what the
25 essential job functions were for a court security

1 officer. And based on those essential job functions,
2 he determined what the medical requirements should be
3 or the medical standards should be for that job.

4 Q. Let me ask you a couple of follow-up
5 questions, doctor. You indicated that Dr. Miller
6 based upon a review of what the court security
7 officers were actually doing in the courthouse he
8 determined what their essential job functions were,
9 did I understand that correctly?

10 A. That was part of it, yes.

11 Q. And then you said based upon those job
12 functions he set medical requirements. Help me, how
13 do the medical requirements tie to the ability to
14 perform the essential job functions? What's the
15 connection between those two?

16 A. For example, if color vision is required
17 in the performance of a job or is an important
18 essential function in performing a job as in the
19 electronic surveillance equipment that is used by the
20 court security officers in screening individuals when
21 they enter the building.

22 So screening individuals coming into the
23 building was considered an essential function of the
24 job of a court security officer. In order to do that
25 function, they need to be able to utilize the

1 equipment that they have. The electronic
2 surveillance equipment is color coded.

3 So the individuals need to be able to
4 determine certain colors coming through in order to
5 know whether somebody should pass through that
6 screening or not. So in this way medical standards
7 were set for vision requirements for hearing
8 requirements. Other medical conditions like
9 endocrinological issues like diabetes or orthopedic
10 issues like back conditions or knee conditions, the
11 physical functions of the job.

12 So based on determining what the essential
13 job functions were for the court security officers,
14 Dr. Miller through experience and through the use of
15 certain consultant experts in the field, through
16 literature searches and through various means made an
17 assessment of what the medical standards should be
18 for that job.

19 Q. Are you familiar with the job functions of a
20 court security officer?

21 A. Yes.

22 Q. How are you familiar with them,
23 Dr. Goldhagen?

24 A. Back in 1999 when Dr. Miller was performing
25 this study one of the sites that were used for

1 assessment of the functions, one of the courtrooms
2 was in Atlanta. And he invited all of the physicians
3 that were performing his reviews to come along to
4 actually see what these court security officers do.
5 And so I was one of those physicians that went to the
6 courthouse to see what the functions were.

7 Q. Dr. Miller I'm going -- excuse me --
8 Dr. Goldhagen I'm going to hand to you what the court
9 reporter will mark as Defendant Exhibit 1 and ask if
10 you can identify that for us.

11 Kate, for your benefit this is the Final
12 Report Medical Requirements for Court Security
13 Officers, prepared for the United States Marshals
14 Service prepared by Federal Occupational Health Law
15 Enforcement Medical Programs. It's AKAL Bates Nos.
16 1137 through 1127. Kate, I'm handing that to the
17 court reporter to see if she'll mark that.

18 (Exhibit 1 was marked for identification.)

19 BY MR. PETERSON:

20 Q. Dr. Goldhagen, you've been handed what's
21 been marked at Defendant No. 1. Does that in fact
22 appear to be a copy of the so called Miller report
23 that you referred to a few moments ago and that has
24 been described for us?

25 A. Yes, it does.

1 Q. You indicated that you actually went to
2 federal courthouses and watched what CSOs did. You
3 indicated that you're familiar with the Miller report
4 that has been presented to you. Would you agree with
5 this, doctor, that the ultimate overall essential job
6 function of court security officers working in
7 conjunction with the United States Marshals Service
8 is to ensure the safety of the judges, courthouse
9 staff, the jurors and the public who come into
10 federal courthouses?

11 A. Yes.

12 Q. Within that overall responsibility, doctor,
13 would you agree that court security officers may
14 be called upon to detect and describe potentially
15 illegal or dangerous or suspicious items or
16 individuals?

17 A. Yes.

18 Q. Would you agree, doctor, that being able to
19 accurately and fully describe the color of clothes
20 worn by a suspicious or dangerous individual or the
21 color of a suspicious item or the color perhaps of a
22 fleeing vehicle, would you agree that the ability to
23 accurately and fully describe the color of those
24 things would also be an essential part of the court
25 security officer's position?

1 A. Yes.

2 Q. Are to your knowledge, doctor, are court
3 security officers called upon to describe the color
4 of those things every day?

5 A. No.

6 Q. Does the fact, doctor, that CSOs or court
7 security officers may not be called upon every single
8 day to describe -- to identify and describe the color
9 of clothing worn by a dangerous individual or the
10 color of a suspicious item, or the color of a fleeing
11 vehicle, does the mere fact that CSOs may not
12 be called upon -- may not be called every day to do
13 that, does that in any degree lessen the importance
14 of the CSO's ability to fully and accurately describe
15 the color of those things when called upon to do so?

16 A. No.

17 Q. Do you have any insight or opinion, doctor,
18 as to whether a tragic or potentially and even deadly
19 consequence could occur if a court security officer
20 failed to accurately and completely describe the
21 color of clothes worn by a suspicious individual or
22 an assailant in the courthouse or the color of a
23 dangerous item or the color of a fleeing vehicle. Do
24 you have an opinion or insight into that, doctor,
25 whether something tragic or deadly may occur if a

1 court security officer was unable or failed to
2 accurately and fully describe the color of those
3 things?

4 A. I believe that a critical incident leading
5 to significant injury or death or some other adverse
6 effect could result from a court security officer
7 being unable to provide accurate color descriptions
8 or be able to -- or someone who wouldn't see color.

9 Q. Indeed, doctor, do you know what incident
10 prompted Dr. Miller to undertake his evaluation,
11 prepare his recommended medical standards?

12 MS. SWEARENGEN: Objection to the form.

13 MR. PETERSON: Kate, your objection is.

14 MS. SWEARENGEN: To form.

15 MR. PETERSON: I'm sorry.

16 MS. SWEARENGEN: Lack of foundation.

17 BY MR. PETERSON:

18 Q. Okay. Do you know what prompted Dr. Miller
19 to undertake an evaluation of the court security
20 officer program which led him to produce his report
21 which we have identified as Defendant's Exhibit No.
22 1?

23 A. I believe it was the Oklahoma City bombing
24 in 1995 that led the judicial committee to recommend
25 having medical standards for the court security

1 officers.

2 Q. When you say a judicial committee, do you
3 know the name of that judicial committee?

4 A. I do not.

5 Q. But is it your understanding that a
6 committee of judges turned to Dr. Miller and said in
7 essence, evaluate the court security program and
8 determine -- fill in the rest of my sentence. What
9 did the committee in essence say to your
10 understanding to Dr. Miller?

11 A. I don't know the process at the time. I
12 don't know whether they contacted Dr. Miller or
13 contacted the Marshals Service who then contacted
14 Dr. Miller to perform this service. But I believe
15 they would have asked somebody at the time to go
16 ahead and assess the functions required of a court
17 security officer and to determine the medical
18 requirements for that.

19 Q. You have mentioned medical requirements and
20 you mentioned color vision deficit. What test was
21 set up by Dr. Miller and the United States Marshals
22 Service for incumbent officers and for applicants to
23 to determine whether they had color vision deficit?

24 A. The initial screening test was the Ishihara.
25 And if an incumbent or an applicant failed the

1 Ishihara then they were requested to provide the
2 results of a Farnsworth D-15 color vision test.

3 Q. Are you familiar with both the Ishihara and
4 the Farnsworth D color vision test, Dr. Goldhagen?

5 A. Not in detail as to exactly how they work,
6 but I am familiar basically and with what is
7 considered a pass or a fail.

8 Q. In your years of service as a reviewing
9 medical officer and following your residency in
10 occupational medicine, do you have an understanding
11 of whether the Ishihara is an accepted test in the
12 medical community for identifying whether someone may
13 have a color vision deficit?

14 A. Yes, it is.

15 Q. And similarly is the Farnsworth D-15 test
16 accepted as a test for determining perhaps the
17 severity or degree of a color vision deficit?

18 A. Yes, it is.

19 Q. What did you consider while you worked as a
20 reviewing medical officer as a "failing score" if you
21 will on the Ishihara test, that is a score that may
22 indicate someone has a color vision deficit?

23 A. We would request the Farnsworth D-15 if an
24 individual achieved a score of less than 10 out of 14
25 on a 14 plate Ishihara.

1 Q. And then what score on the Farnsworth D-15
2 test would you consider to be indicative of a severe
3 color vision deficit?

4 A. On the Farnsworth D-15 one can have both
5 minor errors and major errors. An individual was
6 allowed as many minor errors as whatever they did.
7 However, they were allowed only one major error. So
8 anything beyond one major error was considered a fail
9 on the Farnsworth D-15.

10 Q. Thank you, doctor. Bear with me for just
11 one moment, please. When you reviewed court security
12 officer and incumbent court security officer medical
13 exam for the year in which you were doing the review,
14 did you always look back at all of the prior medical
15 exams for that particular individual?

16 A. No.

17 Q. If and I understand it's an if question,
18 doctor, if an incumbent court security officer had
19 filed a color vision test in the past but for
20 whatever reason the reviewing medical officer who had
21 reviewed those exams in prior years for whatever
22 reason did not medically disqualify that person,
23 would that mean to you that when it became your turn
24 to review that person's annual medical exam you
25 should medically disqualify that person? That's a

1 horrible question and I even lost the train --

2 MS. SWEARENGEN: Kurt, I don't even

3 understand what you're asking.

4 BY MR. PETERSON:

5 Q. I'm surprised everyone fell -- no one fell
6 asleep in the middle of that question. Let me tee it
7 up one more time, please.

8 If a court security officer may have failed
9 a color vision test in the past but for whatever the
10 reviewing medical officer who reviewed those exams
11 did not medically disqualify that person would that
12 mean to you that you should not medically disqualify
13 that person when you did your review and learned that
14 they at that time had a color vision deficit?

15 A. No, it would not.

16 Q. Why? Why do you have that opinion, doctor?

17 A. Color vision is a requirement -- basic color
18 vision is a requirement for the job. So if the
19 individual currently fails the Ishihara then that
20 individual needs to proceed on to the Farnsworth
21 D-15. And if that individual then fails the
22 Farnsworth D-15 currently, it means that individual
23 does not meet the medical, the color vision
24 requirements for the job. So I would not be able to
25 qualify, to medically qualify that individual if he

1 fails the color vision requirement.

2 Q. Were you ever aware of any United States
3 Marshals Service or Federal Occupational Health
4 policy that said that court security officers could
5 have a color vision deficit yet still serve as a
6 court security officer?

7 A. Not to my knowledge.

8 Q. And that certainly wasn't your policy and
9 practice?

10 A. No, it was not.

11 Q. Let's turn specifically to Mr. Boike and his
12 color vision deficit. It's my understanding that in
13 2014, you had occasion to review Mr. Boike's color
14 vision test results in connection with his 2013
15 annual exam. Do I understand that correct?

16 A. Yes.

17 (Exhibit 2 was marked for identification.)

18 MR. PETERSON: Let me hand the court
19 reporter what will be marked as Defendant
20 Exhibit No. 2. And Kate, this has been marked
21 as AKAL Bates No. 590.

22 BY MR. PETERSON:

23 Q. Dr. Goldhagen, you have been handed what has
24 been marked Defendant Exhibit 2. I'm going to ask
25 you to identify that. The title of this document is

1 Judicial Security Division Medical Review Form. It
2 references an incumbent Mr. Gary Boike and then it
3 has got some recommendation of medical qualification
4 or not qualification in Mr. Boike case and it has a
5 signature. Is that your signature at the bottom of
6 this page?

7 A. Yes.

8 Q. Is this the medical review form that you
9 caused to be generated in conjunction with your
10 review of Mr. Boike's color vision testing in 2014?

11 A. Yes, it is.

12 Q. Now in sort of the meat of this document
13 with the typed paragraph, it indicates that CSO Gary
14 Boike has a significant color vision deficit
15 according to the results the Ishihara color vision
16 test (4 correct 14 tested) and the Farnsworth D-15
17 color vision test (6 major errors). Do you see that,
18 doctor?

19 A. Yes.

20 Q. Just so that we are -- I want to make sure
21 that we have the same test results. I'm now going to
22 hand to you what I'm going to ask the court reporter
23 to mark as number 3 and 4.

24 (Exhibit 3 and 4 were marked for
25 identification.)

1 MR. PETERSON: And Kate Defendant's 3 is
2 what you and I have been calling the short
3 version of Gary Boike 2013 annual review, AKAL
4 Bates Nos. 495 and 502. And then Defendant
5 Exhibit No. 4 is the Farnsworth D-15 test
6 results from 2014. Previously Bates marked,
7 Kate, as AKAL 563. Okay.

8 BY MR. PETERSON:

9 Q. Dr. Goldhagen, taking a look first at
10 Defendant Exhibit No. 3 I'm going to submit to you
11 what that is, is the cover sheet of Mr. Boike's
12 annual 2013 exam, and then the second page of this
13 exhibit is that page from that annual exam report
14 which in particular reflects the results of Mr. Boike
15 Ishihara color vision test. As you know there are
16 multiple pages to the exam. This exhibit just
17 includes a cover sheet, and then the page reflected
18 is the test results for that year. Does that in fact
19 appear to be what Defendant Exhibit No. 3 is?

20 A. Yes.

21 Q. And you will see on the second page of
22 Defendant Exhibit 3 toward the bottom, you'll see the
23 reference to the Ishihara test, and somebody wrote
24 down the numbers 4 out of 14. Do you see that?

25 A. Yes.

1 Q. Is that the test results for the Ishihara
2 test you were referring to in your medical review
3 form that is Defendant Exhibit 2?

4 A. Yes, it is.

5 Q. Then similarly can you that I can a look at
6 Defendant Exhibit No. 4 and that document is entitled
7 something in French, but I understand this is the
8 test results for the Farnsworth D-15 test. You can
9 see at the upper right-hand corner it references Gary
10 Boike and a date of 4/12/14. Does this appear to be
11 Mr. Boike test results for the Farnsworth D-15 test
12 that he had conducted in April of 2014?

13 A. Yes.

14 Q. And is this the test result that you were
15 referring to in Exhibit 2 that is your medical review
16 form?

17 A. Yes.

18 Q. All right. Just make sure that we had our
19 test correct. Taking a look at Defendant Exhibit 4,
20 which is the results of the Farnsworth D-15 test, now
21 what do you understand this test says about Mr. Boike
22 color vision deficit?

23 A. That he has a significant color vision
24 deficit. And that it looks to be mainly along the
25 Deutane plane, which refers more to red, green

1 deficiency.

2 Q. Take a look back at your medical review
3 determination that is Defendant Exhibit Number 2.
4 Reading through this document it reads that -- strike
5 that. In Defendant Exhibit Number 2 the document
6 states that Mr. Boike has a significant color vision
7 deficit. Do you see that? The document states that
8 this condition impairs the ability to recognize basic
9 colors and does not meet the required color vision
10 standard for the job. Do you see that, doctor?

11 A. Yes.

12 Q. Do you agree with that?

13 A. Yes.

14 Q. Your medical review form further states that
15 good color vision is important and sometimes a
16 crucial factor in the efficient performance of all
17 duties and responsibilities. Do you see that,
18 doctor?

19 A. Yes.

20 Q. And do you agree with that?

21 A. Yes.

22 Q. Your medical review form further states that
23 the recognition and proper identification of persons,
24 vehicles, buildings, color-coded electronic screeners
25 and/or documents is important. In officer-to-officer

1 communications the description of suspects, vehicles,
2 or buildings may be dependent on accurate color
3 descriptions. In addition court testimony may depend
4 on proper color descriptions. Do you see all of
5 that, doctor?

6 A. Yes.

7 Q. Do you agree with all of that, doctor?

8 A. I do.

9 Q. The last sentence in your medical review
10 form states, therefore the CSO Mr. Boike does not
11 meet the color vision requirement for the job of
12 court security officer. Do you see that, doctor?

13 A. Yes.

14 Q. Do you agree with that, doctor?

15 A. Yes.

16 Q. Did you reach your recommendation that
17 Mr. Boike was not qualified to serve as a court
18 security officer given your best medical judgment and
19 the understanding of what is required or may
20 be required of a court security officer?

21 A. Yes.

22 Q. In concluding that Mr. Boike was not
23 qualified to serve as a court security officer did
24 you make any other additional determination as to
25 whether Mr. Boike could or could not work in any

1 other job, occupation or activity?

2 A. No.

3 (Exhibit 5 was marked for identification.)

4 MR. PETERSON: Doctor, take a look at --
5 well, I'm going to hand you what is going to be
6 marked hopefully as Defendant Exhibit No 5.

7 Kate, that is AKAL 553.

8 BY MR. PETERSON:

9 Q. Doctor, what I have handed to you is another
10 Judicial Security Division Medical Review Form. This
11 one also pertains to Mr. Gary Boike. However, this
12 medical review form is dated a couple of months
13 before yours. You'll see that yours was issued June
14 30th of 2014 whereas Defendant Exhibit 5 this medical
15 review form was issued a couple of months prior in
16 February of 2014. Do you see that, doctor?

17 A. Yes.

18 Q. And if you take a look at this medical
19 review form it indicates that Mr. Boike has had a
20 color vision deficit identified on the initial
21 screening. That initial screening to your
22 understanding was the Ishihara test?

23 A. Yes.

24 Q. And that this medical review form then
25 directed Mr. Boike to have additional testing done

1 with the Farnsworth D-15. Do you see that, doctor?

2 A. Yes.

3 Q. Further on in this medical review form it
4 states next to the letter B -- excuse me -- next to
5 the letter C. It says tinted lenses or glasses are
6 not to be used in order to pass this test. Do you
7 see that, doctor?

8 A. Yes.

9 Q. Was it your understanding as of June of 2014
10 that CSOs were not allowed to wear a color or tinted
11 lens or glass when they were taking any color vision
12 test?

13 A. That's correct.

14 (Exhibit 6 was marked for identification.)

15 Q. Doctor, I'm going to hand to you another
16 exhibit. This will be marked as Defendant Exhibit
17 No. 6.

18 Kate, this is AKAL Bates Nos. 1233 and 1235.

19 Doctor, take a look at what has been marked
20 as Defendant Exhibit 6 and if you would start from
21 the back and work forward. If you turn to the second
22 page of this exhibit you'll see on the e-mail header
23 you'll see it's from apparently you sent on April 2,
24 2014 to someone named Gregory Good. Then you have
25 got a several paragraph e-mail. Do you recognize

1 that e-mail, doctor?

2 A. Yes.

3 Q. And is that in fact an e-mail that you sent
4 to Gregory Good in April of 2014?

5 A. Yes, it would have been. I don't
6 specifically recall requesting it at that specific
7 date, but yes, sir.

8 Q. Then you'll see that then the rest of this
9 document is response from Dr. Good to you sent on
10 April 7, 2014?

11 A. Yes.

12 Q. Does that appear to be what this exhibit is
13 that is you wrote Dr. Good, and then Dr. Good wrote
14 you back?

15 A. Yes.

16 Q. Who is Gregory Good?

17 A. Dr. Good is a vision specialist that we
18 consulted on a frequent bases when we had issues
19 related to vision.

20 Q. And in this particular communication take a
21 look at the e-mail that you sent to him, you'll see
22 in the very second sentence after the greeting, you
23 indicate that you have a consultation request for him
24 from the judicial security division. Do you see
25 that?

1 A. Yes.

2 Q. And you see in the first paragraph that you
3 describe apparently the position of the court
4 security officer position, right?

5 A. Yes.

6 Q. And then you see in the second paragraph it
7 appears that you set forth what are the applicable
8 color vision standards for the court security officer
9 position?

10 A. Yes.

11 Q. You see at the end of that second paragraph,
12 doctor, you wrote, I have disqualified the
13 individual. And then you wrote, one of these
14 individuals has requested that he be allowed to wear
15 contact lens that are available for color blindness.
16 Do you see that?

17 A. Yes.

18 Q. And then in the next paragraph you wrote the
19 JSD, the Judicial Security Division of the United
20 States Marshals Service is requesting an opinion
21 regarding whether it's appropriate to allow color
22 deficient individuals to wear glasses or contacts
23 that allow them to see color in order to meet the
24 standard. Do you see that, doctor?

25 A. Yes.

1 Q. Do you know who the particular CSO was that
2 you were referencing that requested to be allowed
3 some sort of lens so that he or she may be able to
4 pass the color vision test?

5 A. No, I don't.

6 Q. But do I understand your communication to in
7 essence to be asking Dr. Good, this vision
8 specialist, to give you his opinion on whether it's
9 appropriate or advisable to preclude individuals who
10 wear color tinted lenses during color vision testing?

11 A. Actually I didn't ask him whether it was
12 appropriate to preclude. I was asking him whether
13 it's possible for them to wear those in order to meet
14 the color vision requirement.

15 Q. Got it. And then Dr. Good responded to your
16 question?

17 A. Yes.

18 Q. And you will see in the first paragraph
19 Dr. Good wrote at the end of that first sentence or
20 the end of that first paragraph, I along with the
21 vision science community in general do not believe
22 that using a tint spectacle or contact lens provides
23 for any significant improvement in general color
24 discrimination. Do you see that, doctor?

25 A. Yes.

1 Q. Do you see then in the second paragraph
2 Dr. Good apparently talks a little bit about the
3 history and how these tinted lenses work. Do you see
4 that?

5 A. Yes.

6 Q. Do you see in the middle of that second
7 paragraph sort of toward the end Dr. Good wrote, if
8 this, the lens, worked at all it only worked for very
9 bold green colors under very bright lights. Do you
10 see that?

11 A. Yes.

12 Q. Dr. Good wrote also the "perception of
13 green" was not instantaneous (as it is in normal
14 color vision) and only came about after vigorous
15 inspection. Do you see that, doctor?

16 A. Yes.

17 Q. Dr. Good further wrote that the lens is not
18 useful for less than bold colors (pastels) or dark
19 color. And when working in less than ideal lighting
20 conditions. Do you see that, doctor?

21 A. Yes.

22 Q. And Dr. Good also wrote, also the lens can
23 even introduce extra color confusions that weren't
24 present initially for the color deficient individual
25 when not wearing the tinted lens. Do you see that,

1 doctor?

2 A. Yes.

3 Q. Do you see in the next paragraph that
4 Dr. Good then gave his opinion that often by wearing
5 the a severely color deficient individual may be able
6 to "pass" a color vision screening test but Dr. Good
7 continued to write that tinted lens does not, his
8 emphasis, provide for normal color discrimination but
9 instead interferes with the design of color vision
10 screening test. Do you see that, doctor?

11 A. Yes.

12 Q. Continuing on in that paragraph Dr. Good
13 wrote by using the color tinted lens a color vision
14 defective can identify a figure on a test correctly
15 not by using color vision but by using brightness
16 discrimination. Do you see that?

17 A. Yes.

18 Q. He goes on to explain that position in some
19 more detail. And then in the final paragraph
20 Dr. Good concludes as follow, Dr. Good wrote, because
21 the court security officer deals with color coding on
22 scan equipment and as a weapon carrying law
23 enforcement officer that may need to comprehend
24 descriptions of individuals to include colors of
25 clothing and equipment, I, Dr. Good agree that

1 passage of the Farnsworth D-15 without the use of
2 tinted spectacle or contact lenses is the proper
3 standard color vision test for the CSO position. Do
4 you see that, Dr. Goldhagen?

5 A. Yes.

6 Q. And then finally Dr. Good wrote,
7 additionally, I do not believe it is appropriate to
8 bypass the color vision standard for the position
9 with the use of a color contact lens or a tinted
10 spectacle lens. Do you see that, doctor?

11 A. Yes.

12 Q. Do you have any reason to disagree with
13 anything that Dr. Good said in this response to you?

14 A. No.

15 Q. Do you consider Dr. Good to be an expert?

16 A. Yes.

17 Q. In the field of color vision deficit?

18 A. Yes.

19 Q. In your best medical judgment based upon
20 communication you have with Dr. Good and otherwise,
21 do you believe tinted lenses should be allowed to be
22 worn by a court security officer either during color
23 vision testing or on the job?

24 A. Based on the recommendation by Dr. Good our
25 vision consultant, I do not believe that court

1 security officers should be allowed to use tinted
2 lenses during testing or on the job.

3 Q. Did you in good faith and to the best of
4 your medical judgment believe that Mr. Boike's color
5 vision deficit could prevent him from fully and
6 accurately being able to identify and describe
7 colors?

8 A. Yes.

9 Q. Did you truly and in good faith and in the
10 best of your medical judgment believe that
11 Mr. Boike's inability to effectively and fully see
12 color and thus describe color did you believe in good
13 faith that may potentially lead to a dangerous and
14 perhaps even fatal security result?

15 A. Yes.

16 MR. PETERSON: Thank you, Doctor. I have no
17 further questions. Counsel for Mr. Boike may
18 have some questions for you.

19 (Plaintiff Exhibit 1-3 were marked for
20 identification.)

21 EXAMINATION

22 BY MS. SWEARENGEN:

23 Q. Hi, Dr. Goldhagen, again I'm Kate
24 Swearengen. I have some questions for you. I'd like
25 to get started and then maybe go off the record to

1 feel that an individual should not perform the
2 functions of the job pending further testing I would
3 usually state that in the review itself. So the fact
4 that Dr. Gildiner did not specifically state that he
5 should be kept off the job pending further testing my
6 assumption is he continued performing the job.

7 Q. Is that an option for a reviewing medical
8 officer to temporarily or permanently remove someone
9 from duty pending further documentation necessary to
10 make a medical determination?

11 A. It would be a recommendation by the
12 reviewing medical officer. The agency itself would
13 make the determination about whether that person
14 would go off the job itself or not. But it would
15 strictly be a recommendation from the medical
16 reviewing officer.

17 Q. But that's a recommendation the reviewing
18 medical officer would be empowered to make?

19 A. Yes.

20 Q. So as I understand it and please correct me
21 if I'm wrong, there are basically three options.
22 Number one, the reviewing medical officer determines
23 if the individual is not medically qualified. Number
24 two, the reviewing medical officer determines that
25 the person is medically qualified. Number three,

1 there is insufficient information to make a medical
2 determination and in that case the reviewing medical
3 officer can either recommend that the individual be
4 removed from duty or cease work; is that correct?

5 A. Pending additional documentation, yes.

6 Q. Do you know why Dr. Gildiner did not remove
7 Gary Boike from duty at this time?

8 A. No.

9 Q. Did you have any conversations with
10 Dr. Gildiner about Gary Boike medical qualifications?

11 A. I don't recall.

12 Q. This is an if question but if you had been
13 in Dr. Gildiner's place and you had reviewed the
14 initial Ishihara result from Gary Boike would you
15 have allowed him to keep working pending the
16 additional documentation or would you have removed
17 him from duty?

18 A. I would have allowed him to keep working.

19 Q. Why is that?

20 A. It's my understanding that he had been on
21 the job for quite a number of years. Therefore, I
22 felt -- I would have felt that it's best to give him
23 the benefit of the doubt pending the additional
24 documentation.

25 Q. Do you know if there was a general practice

1 A. It probably would have been mostly in maybe
2 2012, 2013, maybe 2014 that time frame.

3 Q. Why that time frame in particular?

4 A. I -- the Judicial Security Division had a
5 number of reviewing medical officers prior to my
6 taking on this agency. I took on this agency as a
7 reviewing medical officer sometime maybe in 2012 or
8 2013. At the time that I took over I noticed that
9 the employees with color vision deficit had not been
10 previously medically disqualified, however, that is a
11 medical standard for the job. And a requirement for
12 the job is to have basic color vision. So I felt it
13 was my duty to go ahead and uphold the medical
14 standards for the job when I came on as reviewing
15 medical officer. So at that time all of the
16 employees who had been previously qualified had to go
17 forward with the Farnsworth D-15 test, and if they
18 failed that then they were found medical not
19 qualified.

20 Q. Dr. Goldhagen, you mentioned that in 2012 or
21 2013 that you sort of took it upon yourself to ensure
22 that the Marshals Service color vision standards were
23 honored by looking at the individuals who came to you
24 who had color vision deficiencies but were not
25 previously medically disqualified. Is that fair?

1 A. Yes.

2 Q. Did you get any -- what I'm trying to figure
3 out is did that just come from you or did you get any
4 guidance from someone at the Marshals Service or from
5 someone else?

6 MR. PETERSON: Object to the form of the
7 question please, Kate.

8 THE WITNESS: I informed the Marshals
9 Service that a number of individuals appeared to
10 have been qualified with color vision deficit
11 and that I needed to uphold the medical
12 standard. So I informed them that this was
13 occurring.

14 BY MS. SWEARENGEN:

15 Q. Who did you inform specifically?

16 A. Most likely Barbara Hayes. She was my point
17 of contact at the Marshals Service.

18 Q. And what, if anything, did Ms. Hayes say to
19 you in response?

20 A. I don't recall.

21 Q. Do you recall if the Marshals Service
22 approved you upholding the medical standard and
23 disqualifying these individuals?

24 A. Yes, they did.

25 Q. How did they approve that?

1 A. Through not providing a waiver for these
2 individuals. When my medical qualification or
3 disqualify came through, then they informed Akal I
4 imagine that these individuals were not medically
5 qualified.

6 Q. What's the waiver that you just mentioned?

7 A. An agency -- when the reviewing medical
8 officer provides a medical disqualification, that's
9 only a recommendation. The agency itself makes the
10 final decision regarding medical qualification or
11 not. An agency could provide a waiver for any
12 disqualification if they feel that that is
13 appropriate.

14 Q. In your tenure as a reviewing medical
15 officer for the Marshals Service are you aware of the
16 Marshals Service ever having issued a waiver?

17 A. Not to my knowledge.

18 Q. Have you seen other agencies issue waivers?

19 A. Yes.

20 Q. What agencies were those?

21 A. National Park Service.

22 Q. Any other agency?

23 A. Not that I'm aware of.

24 Q. Dr. Goldhagen, when you reviewed for the
25 court security officer physicals and follow-ups, did

1 could keep things consistent between physicians who
2 were doing the reviews but yet at the same time they
3 could tailor it for that specific individual.

4 Q. That's a good point. I guess we should have
5 defined our terms. Do you think the language in
6 Exhibit 2 which references the importance of good
7 color vision even though that might boilerplate, that
8 it's standard on the form, do you think that language
9 is important?

10 A. Yes.

11 Q. My opponent asked you some questions about
12 her Exhibit 2, which is another opinion letter from
13 Dr. Good whom you described as a color vision expert.
14 She didn't ask many questions about that document.
15 Let me ask you a couple. On the second page of that
16 exhibit Dr. Good wrote that the mission of the court
17 security officer is to protect court officials and
18 safeguard the public for federal court pending. The
19 position physician mission is described as "a
20 responsibility that permits no errors." Dr. Good
21 wrote that color is an important descriptor used for
22 efficient officer to officer communications when
23 transmitting important "be on the lookout
24 information". Dr. Good wrote the color of clothing,
25 vehicles and personal items are important descriptors

1 used to increase communication efficiency. Dr. Good
2 further wrote that incorrect color interpretation
3 will impair efficiency of communication and can
4 result in a suspect escaping apprehension or a
5 "nonsuspect" being detained.

6 Do you have any reason to disagree with any
7 of the assertions that Dr. Good made?

8 A. No. And he was specifically referencing
9 court security officers in that document.

10 Q. Do you think ensuring the safety of people
11 in a federal courthouse by court security officers is
12 a big deal, doctor?

13 A. Yes.

14 MR. PETERSON: I have no further questions.

15 Thank you.

16 FURTHER EXAMINATION

17 BY MS. SWEARENGEN:

18 Q. I have just a few and it won't be very long.
19 Dr. Goldhagen, when Mr. Peterson was referencing
20 earlier in his questioning the Oklahoma City bombing,
21 do you have any knowledge as to whether any of the
22 other court security officers on duty at that time
23 had color vision deficiency?

24 A. No. I don't know.

25 Q. Turning to Defendant Exhibit 2?

7113

Judicial Security Division
Medical Review Form

Akai

LE Incumbent Name: Gary Bolke Date of Birth: _____ Age: 60 Gender: M
 SSN: _____ LE Incumbent Court Security Officer
 Examining Facility: _____
 Circuit 6 EME

Report of Medical Examination: Date: 12/18/2013 This review is based on FY: 2014
 Supplemental Medical Information: Date: 4/12/2014 Supplemental Medical Received Date: 04/22/2014

YOUR STATUS IS: Not medically qualified to perform the essential functions of the job

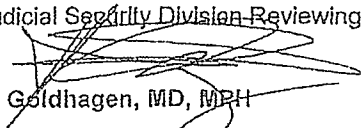
The following medical condition(s) poses a significant risk to the health and safety of yourself and/or others in the performance of essential job functions. Medical follow-up, if requested, and any restriction of duties are listed below. Send medical information to your employer.

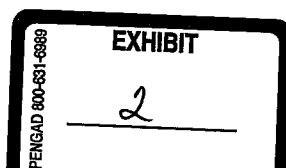
ALERT: NOT MEDICALLY QUALIFIED

CSO Gary Bolke has a significant color vision deficit according to the results of the Ishihara color vision test (4 correct/14 tested) and the Farnsworth D15 color vision test (6 major errors) provided by Thomas F. Koehler, OD on 4/12/14. This condition impairs the ability to recognize basic colors and does not meet the required color vision standard for the job. Good color vision is important and sometimes a crucial factor in the efficient performance of all duties and responsibilities. The recognition and proper identification of persons, vehicles, buildings, color coded electronic screeners, and/or documents is important. In officer to officer communication, the description of suspects, vehicles or buildings may be dependent upon accurate color descriptions. In addition, court testimony may depend on proper color descriptions. Therefore, the CSO does not meet the color vision requirement for the job of Court Security Officer.

Review Date: 06/30/2014

Judicial Security Division Reviewing Medical Officer:


 H. Goldhagen, MD, MPH



U.S. Department of Justice
United States Marshals Service

Acknowledgement of Conditions of Court Security Officer Eligibility

INSTRUCTIONS: Applicants to become U.S. Marshals Service Court Security Officers should complete Form CSO-004. Return completed acknowledgements to the contracting company.

I, GARY Boike (Insert name), understand that my (potential) employer
AKAL Security Inc. (Insert the name of the company), is under contract with the United States
Marshals Service (USMS) to provide security services.

I also understand AKAL Security Inc. (Insert the name of the company) has, or will hire
me to work on their behalf, as a Court Security Officer (CSO), for the purposes of fulfilling its contract responsibilities with the
USMS. I understand that I must not at any time, represent myself as an employee of the USMS.

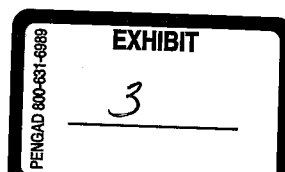
I acknowledge and understand that my eligibility to perform services under the contract will be determined by the USMS based upon
meeting all CSO contract qualifications standards. These qualifications include successful completion of an initial and yearly medical
examination; weapon qualification test; a background investigation; and, other CSO qualification standards noted in the contract.

I acknowledge and understand my suitability and eligibility to perform as a CSO under the contract will be an annual requirement, or
as deemed necessary by the Government. I acknowledge and agree that if I fail, at any time, to meet any of the CSO qualification
standards, I will be prohibited from performing services under the USMS contract.

I fully understand and accept that if I am granted an "interim approval" to begin performing CSO services under the contract and
subsequently fail to pass the medical standards, the weapons qualification standards or the background investigation, this approval
will be revoked.

Name (Print): GARY Boike
Signature: Gary Boike
Date: 12-18-13

Submission Instructions: The contracting company should submit completed forms to the United States Marshals Service, 2604 Jefferson Davis
Highway, Alexandria, VA 22301, Attention: JSD/OCS/Applications & Qualifications Branch (CS-3, 4th Fl.). Retain a copy for your records.



Form CSO-004
Rev. 03/12

AKAL000495

APPLICANT/INCUMBENT'S SIGNATURE AND CERTIFICATION STATEMENT

Read the following carefully before signing this certification. A false answer to any question in this statement may be grounds for disqualification and may be punishable by fine or imprisonment (U.S. Code Title 18, Section 1001).

I have completed this statement with the knowledge and understanding that any or all items contained herein may be subject to investigation and I consent to the release of information concerning my capacity and fitness by employers, educational institutions, law enforcement agencies, and other individuals and agencies, to duly accredited investigators, and other authorized employees of the Federal Government for that purpose.

CERTIFICATION: *I certify that all of the statements made by me are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.*

Applicant/Incumbent Name (Print):

GARY M. Boike

Signature:

Gary M. Boike

Date:

12-18-13

PART V - PHYSICAL MEASUREMENTS (To be completed by Examining Physician or clinic staff.)

VITAL SIGNS

Weight:

Height:

REDACTED

Blood Pressure:

Pulse:

VISION/ACUITY

	Both	Right	Left		Both	Right	Left
Uncorrected Near:	20/ 30	20/ 30	20/ 40	Uncorrected Far:	20/ 25	20/ 70	20/ 70
Corrected Near:	20/ 25	20/ 30	20/ 40	Corrected Far:	20/ 25	20/ 30	20/ 25

VISION - COLOR

Testing MUST be done with Ishihara (or comparable) Pseudo-Isochromatic Plates. A MINIMUM OF FOURTEEN PLATES must be reported.

Type of test:

☒ Ishihara ☐ Other: *4/14*

of plates correct:

4

of plates tested:

14

VISION - PERIPHERAL

Is the peripheral vision normal?

☒ Yes ☐ No

VISION - DEPTH PERCEPTION

Type of test:

TITMUS

Score:

85

Seconds of arc:

30

HEARING

Hearing testing must be done with an AUDIOMETER IN A SOUND CONTROLLED ROOM OR BOOTH. Each ear must be tested separately at 500, 1000, 2000, 3000, and 4000 Hz. HEARING AIDS MAY NOT BE USED DURING TESTING. Attach audiometer printout to this form.

Results:	500	1000	2000	3000	4000
Right ear			REDACTED		
Left ear					

PATIENT NAME (LAST, FIRST, MI):

Boike, GARY, M.

L: **REDACTED** R:

TEST DICHOTOMIQUE de FARNSWORTH
pour la Cécité des Couleurs - Série D-15
FARNSWORTH DICHOTOMOUS TEST FOR COLOR BLINDNESS
Series D-15

Nom GARY BOIKE Age 51 Date 4-12-14 N° 1000000000
Name Normandy Optica Examiner Thomas R. Koenig
Lieu d'examen 51224 RD
Place of Examination

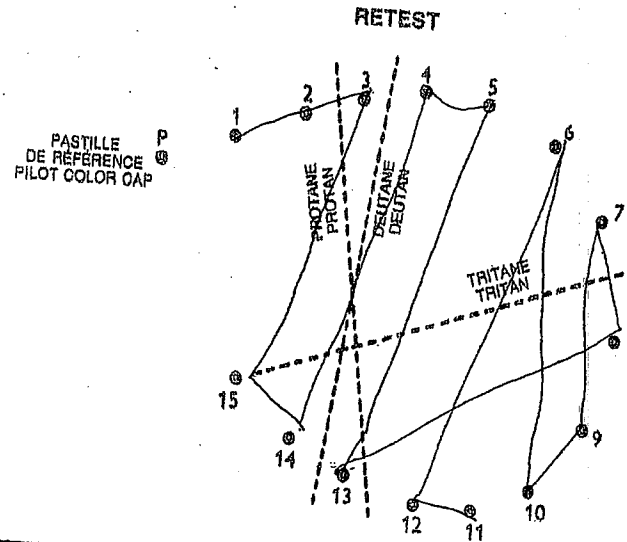
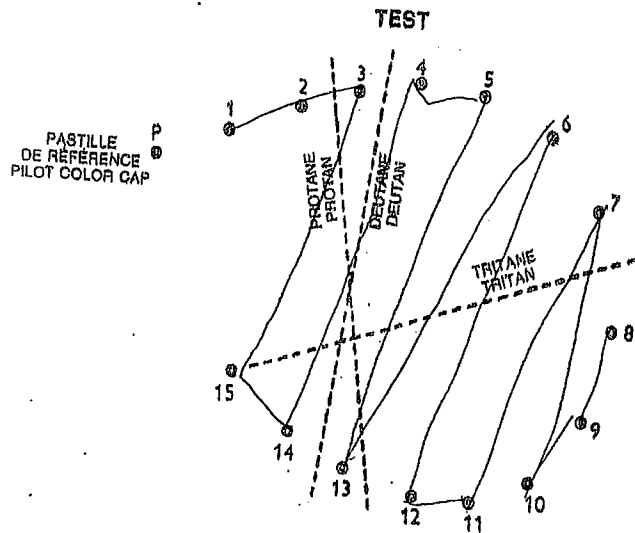
Type	Axe de Confusion Axis of Confusion		RÉUSSITE CORRECT	ÉCHEC ERROR
PROTANE	(ROUGE - bleu vert) (RED - blue green)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DEUTANE	(VERT - rouge pourpre) (GREEN - red purple)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
TRITANE	(VIOLET - jaune vert) (VIOLET - yellow green)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Test : Ordre donné par le sujet
Order given by patient

1	2	3	15	14	4	5	13	6	12	11	7	10	9	8
---	---	---	----	----	---	---	----	---	----	----	---	----	---	---

Retest : Ordre donné par le sujet
Order given by patient

1	2	3	15	14	4	5	13	8	9	10	11	12	13	14	15
---	---	---	----	----	---	---	----	---	---	----	----	----	----	----	----



SEE
INTERPRETATION
ON BACK

LUNEAU OPHTALMOLOGIE - B.P. 252, 28005 CHARTRES

EXHIBIT

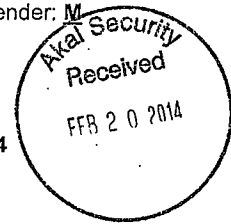
4

AKAL000563

Judicial Security Division Medical Review Form

LE Incumbent Name: Gary Boike Date of Birth: _____ Age: 60 Gender: M
 SSN: REDACTED LE Incumbent Court Security Officer
 Examining Facility: _____
 Circuit 6

Report of Medical Examination: Date: 12/18/2013 This review is based on FY: 2014
 Supplemental Medical Information: Date: _____ Supplemental Medical Received Date: _____



YOUR STATUS IS: Medical determination deferred pending further documentation

Incumbent has medical findings which may hinder safe and efficient performance of essential job functions. Please provide the following detailed or diagnostic medical information. Per agency request, if further information is not provided, a determination will be made based on available medical information. Send medical information to your employer.

The written request below should be provided to the treating physician, or other applicable health care provider(s), such as an audiologist. Failure to provide the requested information or the failure to demonstrate that the medical condition(s) in question has been satisfactorily treated/resolved could result in medical disqualification. Individuals who are medically disqualified are not allowed by the Marshals Service to serve as Court Security Officers. In addition to the medical information requested below, the CSO applicant or incumbent and/or the treating physician should be encouraged to provide any additional written opinions or comments and any other copied records that may be useful in reaching a determination of medical qualification.

1. A color vision deficit has been identified on the initial screening test (4 of 14 plates correct). Therefore, further testing using the Farnsworth D-15 color vision test is necessary. Please be certain that the testing facility can administer the Farnsworth D-15 test. Other testing formats and Farnsworth testing using more than 15 color objects are not acceptable. Please also NOTE the following:
 - a. This test MUST be explained, observed and results recorded and signed by the eye doctor.
 - b. A copy of the test must be provided, to include graph with cap order, with the eye doctor's interpretation and signature.
 - c. Tinted lenses or glasses are NOT to be used in order to pass this test and this must be documented in the medical report.
 - d. A government issued photo ID (Drivers license, passport, military ID), must be checked and verified for the person tested and this verification acknowledged in the report.

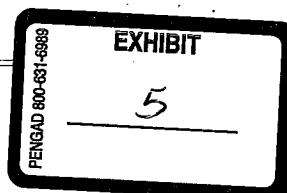
It is important that all above verification be addressed in the report.

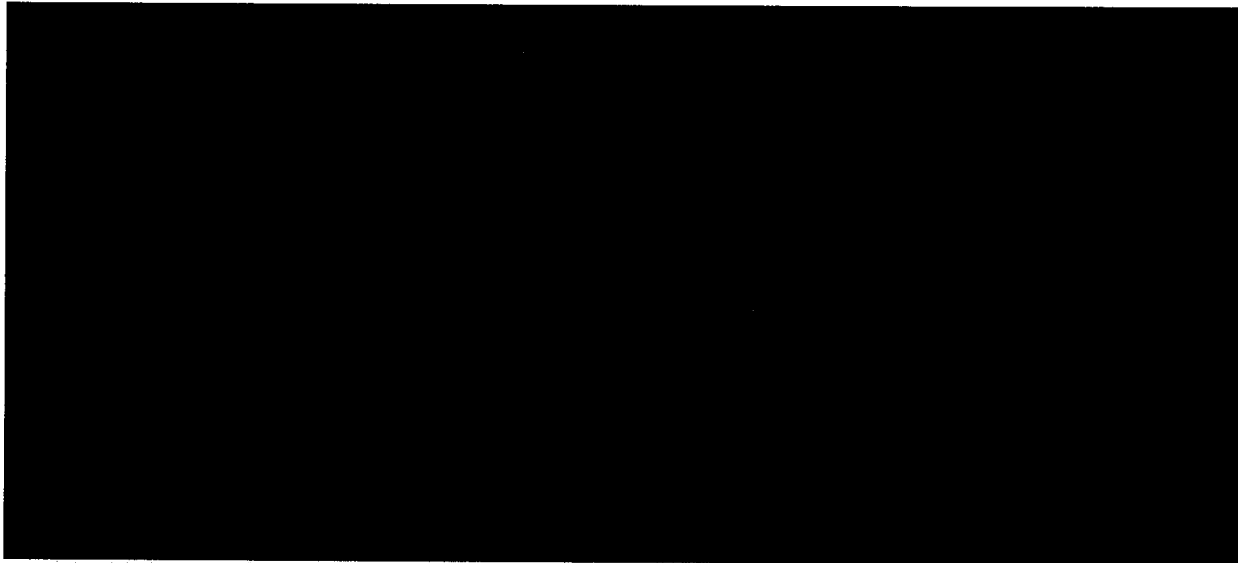
Review Date: 02/01/2014

Judicial Security Division Reviewing Medical Officer:

K.C. Gildiner, MD, MPH

KC GILDINER, MD
FOM ATLANTA





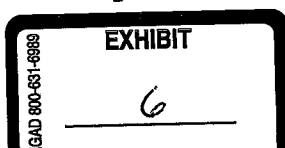
From: Good, Gregory [good.3@osu.edu]
Sent: Monday, April 07, 2014 3:35 PM
To: Goldhagen, Haviva (PSC/FOH/CHS) (CTR)
Cc: Howard, Jeff (PSC/FOH/CHS) (CTR); Ohlsson, Sara (PSC/FOH/CHS) (CTR)
Subject: RE: tinted lenses for correction of color vision deficit

Haviva:

I understand the concern of JSD concerning this issue. It does seem logical that using the tinted contact lens for color deficiency would be similar to allowing glasses for poor visual acuity due to nearsightedness or a hearing aid for poor hearing. I strongly state, however, that this is not the case. I, along with the vision science community in general, do not believe that using a tinted spectacle or contact lens provides for any significant improvement in general color discrimination.

Tinted contact lenses designed for use with significant color vision deficiencies were first introduced in the early 1970's. The X-Chrom lens was developed with a deep red tint to provide some help with colors for severe color vision defectives. The vast majority of color vision defectives confuse greens, browns, and reds, as well as confuse blues and purples. The idea of using the X-Chrom lens was that the deep red tint would essentially render all green objects BLACK as the red tint would absorb all green wavelengths of light. Then, by fitting the red lens to a single eye, green objects would appear normal brightness with one eye and appear very dark to the eye wearing the contact lens. The difference in brightness as seen by the two eyes would then create a shimmering (or luster) to the brain. Red objects would appear normal brightness to each eye, however. If this worked at all, it only worked for very bold green colors under very bright lights. Also, the "perception of green" was not instantaneous (as is normal color vision) and only came about after vigorous inspection. The lens is not useful for less than bold colors (pastels) or dark colors and when working in less than ideal lighting conditions. Also, the lens can even introduce extra color confusions that weren't present initially for the color deficient individual when not wearing the tinted lens.

Often, however, by wearing the lens a severely color deficient individual may be able to "pass" a color vision screening test. The tinted lens does NOT provide for normal color discrimination, but instead, interferes with the design of the color vision screening test in which the color and brightness of figures and background are very



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precisely produced to help identify those with normal color vision from those that lack normal color discrimination. By using the tinted lens, however, a color vision defective can identify a figure on the test correctly, not by using color vision, but by using brightness discrimination. Thus, it appears the individual may discriminate colors as well as a color vision normal (by passing the screening test), but this is not the case. When colored samples with various saturation, brightness, and hue are viewed, color confusions remain. If basic colors are confused by a color vision deficient when not wearing the lens, then basic colors (and certainly subtle shades of color) will be confused while wearing the tinted lens in the "real" world when shadows, lightings, and various backgrounds constantly change the visual environment.

Because the Court Security Officer deals with color coding on scanning equipment, and, as a weapon carrying "law-enforcement" officer that may need to comprehend descriptions of individuals to include colors of clothing and equipment, I agree that passage of the Farnsworth D-15 test (without the use of tinted spectacle or contact lenses) is the proper standardized color vision test for the CSO position. Additionally, I do not believe it is appropriate to bypass the color vision standard for the position with the use of a tinted contact lens or a tinted spectacle lens.

Sincerely,

Gregory W. Good, OD, PhD
Professor Emeritus, Clinical Optometry
The Ohio State University
Cell 614-204-7671

From: Goldhagen, Haviva (PSC/FOH) (CTR) [Haviva.Goldhagen@foh.hhs.gov]
Sent: Wednesday, April 02, 2014 1:31 PM
To: Good, Gregory
Cc: Howard, Jeff (PSC/FOH) (CTR); Ohlsson, Sara (PSC/FOH) (CTR)
Subject: tinted lenses for correction of color vision deficit

Greg,

Hi there. Hope all is well at your end.

I have a consultation request for you from the Judicial Security Division (JSD). This Agency is a division of the U.S. Marshals Service and oversees the Court Security Officers. They are contracted to the USMS/JSD to provide security in the Federal Courthouses. These are the fellows in the blue jackets who man the entrances to these buildings and may help the Deputy U.S. Marshals when needed in the Courtrooms. They carry guns. They check IDs and check people through the security scanners (magnetometers, X-Ray scanners, and walk-through/hand-held metal detectors) which are frequently color coded. They may need to physically control violent, irrational or unruly individuals or crowds, run up or down hallways or several flights of stairs, defend themselves against physical attack, remove a prone individual from danger, subdue an individual after running in pursuit, and arrest a resistant individual.

The vision standards require the ability to distinguish basic color, as well as shades of color. No uncorrected vision standard; corrected binocular distant vision of 20/30 or better, with worse eye of 20/125 or better; corrected binocular near vision of 20/40 or better; normal peripheral vision; no depth perception standard. When a CSO or applicant fails the Ishihara screening test (less than 10/14) and then fails the Farnsworth D15 (greater than one major error), I have disqualified the individual. One of these individuals has requested that he be allowed to wear contact lenses that are available for color blindness.

The JSD is requesting our opinion regarding allowing color deficient individuals to wear glasses or contacts that allow them to see color in order to meet the standard. We currently allow glasses/contacts in order to meet the visual acuity standard. We currently allow hearing aids on the job in order to meet

AKAL001234

the hearing standard.

Please provide your opinion regarding the use of lenses/contacts to meet the color vision standard. Charge your consultation time to JSD, Agreement #A105254. Please send your consultative hours to STG for payment and also to Jeff Howard and Sara Ohlsson (emails above) in order to ensure appropriate billing to JSD.

Thank you.

Haviva